

1 **SHORELINES HEARINGS BOARD**
2 **STATE OF WASHINGTON**

3 FRIENDS OF SEAVIEW, an unincorporated
4 association,

5 Petitioner,

6 v.

7 PACIFIC COUNTY, STRUCTURAL
8 INVESTMENTS & PLANNING LLC. And
9 MATTHEW DONEY,

10 Respondent.

SHB NO. 05-017

ORDER DENYING RECONSIDERATION

11 On October 19, 2005, the Shorelines Hearings Board (Board) issued an Order Granting
12 Summary Judgment and Dismissed the above case. Respondents Matthew Doney (Doney) and
13 Structural Investments & Planning, LLC filed a Motion for Reconsideration with the Board on
14 November 2, 2005, and Petitioner Friends of Seaview (Friends) opposed reconsideration. The
15 Board reviewed the following material in considering the motion for reconsideration:

- 16 1. Doney & Structural's Motion for Reconsideration, filed November 2, 2005;
17 2. Answer to Motion for Reconsideration, filed November 7, 2005; and
18 3. Doney's November 8, 2005 letter in reply to Petitioner's Answer to Motion for
Reconsideration, filed November 8, 2005.

19 Based on the record in this case, the materials submitted in the Motion for
20 Reconsideration, and the arguments of counsel, the Board makes the following ruling:

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1 Respondent has asked the Board to reconsider its decision for three reasons, the first
2 being that the Pacific County Hearings Officer's decision on the Shoreline Substantial
3 Development Permit (SSDP) was not a final order. That reason has apparently been withdrawn,
4 in recognition of the fact that the Hearing Examiner's shorelines decision was indeed a final
5 decision and was properly before this Board.

6 Respondent's second reason is that certain new information (such as a new proposed lot
7 configuration) was not considered by this Board. This new information was apparently
8 submitted to the Pacific County Board of County Commissioners in an appeal of associated non-
9 shoreline decisions (and after the County Hearing Examiner's final decision on the SSDP). In
10 making its decision on summary judgment, this Board considered the entire record submitted in
11 connection with the County's shoreline permit decision and in the appeal of that permit to this
12 Board. It is not appropriate for the Board to consider a new proposal, untimely submitted, that
13 has never undergone local public shoreline review.

14 In an analogous situation, the Pollution Control Hearings Board remanded a water rights
15 decision to Ecology because the project components changed after the decision was issued. The
16 Board concluded that a permit decision "without analysis of the actual project components is
17 insufficient as a matter of law." *Puyallup Tribe of Indians et al. v. Ecology et al.*, PCHB Nos.
18 03-105 (2004) (Order Remanding Case). An open and complete local public process is a critical
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1 prerequisite to any appeal to this Board. New information that was never submitted to the local
2 decision maker and untimely presented after summary judgment is not a proper consideration.¹

3 Respondent asserts that the Board's Order vacating the permit requires clarification.
4 Respondent also asks the Board to consider and take into account difficulties that could arise in
5 Respondents' being required to start the local shoreline permitting process over again. This
6 Board has made its decision based upon the requirements of the law and the record that is before
7 the Board as to this permit. The Board's vacation of the SSDP in this case was based on
8 significant shortcomings in the application: (1) The lot configurations did not comply with the
9 requirements of the Pacific County Shoreline Master Program; and (2) The application was
10 missing several of the application requirements in WAC 173-27-180. As a result, the County
11 Hearings Officer did not have adequate information to conclude that the development plan
12 complied with either the Pacific County Shoreline Master Program or the goals and policies of
13 the Shoreline Management Act. Based on the record, evidence and arguments of counsel in this
14 appeal, the Board vacated the shoreline substantial development permit, making it a nullity.
15 Issues relating to future permitting actions by the county are not properly before the Board in this
16 appeal.

17 Respondent has presented no proper basis for reconsideration of the Board's decision.
18 Therefore, the Board issues the following

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21 ¹ This Board has previously recognized the importance of providing adequate public notice for a proposed project
because, with adequate notice, "it is likely that more persons would have expressed their views at an early stage in

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2 **ORDER**

3 Respondent Doney/Structural Investments' Motion for Reconsideration's motion for
4 Reconsideration is DENIED.

5 Done this 17th day of November 2005.

6 **SHORELINES HEARINGS BOARD**

7 Bill Clarke, Chair

8 William H. Lynch, Member

9 Mary Alyce Burleigh, Member

10 Peter Philley, Member

11 Judy Wilson, Member

12 Cassandra Noble
13 Administrative Appeals Judge, Presiding
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21 the proceedings. These views might have influenced the City Council's decision." *Faben Point Neighbors v. Mercer Island*, SHB No. 98-63, at 7 (Order Granting Summary Judgment on Reconsideration)(1999).

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